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OFFICE OF PETITIONS

In re Application of	:	
Park et al.	:	
Application No. 10/730,805	:	ON PETITION
Filed: December 9, 2003	:	
Attorney Docket No. 122/20	:	

This is a decision on the "Supplemental Petition To Correct Filing Receipt," filed October 24, 2005, requesting that the above-identified application be accorded a filing date of December 9, 2003, rather than the presently accorded filing date of December 8, 2003.

On March 15, 2004, applicant filed a "Petition To Correct Filing Receipt," asserting that the filing receipt contained an error with respect to the filing date of the above-identified application. The petition stated that Jeff J. Schwartz, attorney for applicant, deposited the application on December 8, 2003, as evidenced by the enclosed Express Mail label No. ER419457513US. The same Express Mail label number was placed on the original application papers located in the official file. On July 7, 2005, the Office mailed a corrected filing receipt, indicating a filing date of December 8, 2004. On October 11, 2005, applicant averred that the corrected filing receipt contained an error with respect to the filing date. Applicant requested that the Office correct the filing date from December 8, 2004 to December 8, 2003. Thereafter, on October 19, 2005, the Office mailed a second corrected filing receipt, indicating a filing date of December 8, 2003.

On October 24, 2005, applicant filed the present petition, requesting that the Office accord the application a filing date of December 9, 2003. Applicant stated that in the prior petitions, applicant incorrectly asserted a filing date of December 8, 2003; the date the application was placed in an Express Mail drop box. Applicant explained that applicant typed the date "12/8/05" in the date-in box on Express Mail label No. ER419457513US. Applicant further explained that the handwritten "9" superimposed over the typed "8" that appeared in the date-in box on the Express Mail label (a correction applicant believed was made by a USPS employee) served as evidence that the USPS did not receive the application package until December 9, 2003.

Initially, the Office notes that the date-in should be entered by a USPS employee, and not by applicant. "The reason the USPTO considers correspondence to have been filed as of the date of deposit as "Express Mail" is that this date has been verified by a disinterested USPS employee, through the insertion of a "date-in," or other official USPS notation, on the "Express Mail" mailing label." MPEP 513. If an applicant enters the date-in on the Express Mail label, the date of deposit can no longer be verified by a disinterested person. Moreover, such an action by an applicant brings into question the reliability of the evidence submitted to show that the applicant filed the correspondence as of the date of deposit in the USPS as Express Mail.

Nevertheless, after inquiring with the USPS, the USPTO received a Track & Confirm email, indicating that the USPS accepted a package bearing Express Mail label No. ER419457513US on December 9, 2003, at 12:40 AM, in Charlotte, NC 28228.

In view of the information provided in Track & Confirm email by the USPS, the petition is granted. In the future, the Office suggests that applicant provide such documentary evidence with any petition in which applicant is asserting a discrepancy in the filing date accorded to an application. Furthermore, the Office strongly suggests that applicant refrain from entering the date-in on any Express Mail labels, but rather allow a USPS employee to insert that information.

The Office of Initial Patent Examination is directed to correct the filing date of the above-identified application to December 9, 2003, and to mail a corrected filing receipt.

Telephone inquiries regarding this matter should be directed to the undersigned at (571) 272-3211.

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